



**Defense Acquisition University**

# **Contract Administration and Audit Services**

## **An overview of FAR Part 42**

**Presented by:**

**Kurt Chelf**

**Professor of Contracting**

**DAU-Midwest**



# **PART 42 - CONTRACT ADMINISTRATION AND AUDIT SERVICES**

- **42.002 - Interagency agreements, non-DoD support.**
  - ✦ **Avoiding duplication of audits, reviews inspection and examinations of contractors.**
  - ✦ **DFARS 242 - Non-DoD support**
- **42.003 - Cognizant Federal agency.**

***Learn. Perform. Succeed.***



# **Subpart 42.1—Contract Audit Services**

---

- **42.101 Contract audit responsibilities.**
  - **Information and advice based on audits**
  - **Reviewing financial and accounting aspects**
  - **Performing other analyses and reviews**
- **42.102 Assignment of contract audit services.**
  - **Requesting of audit services**
- **42.103 Contract audit services directory**
  - **Directory of Federal Contract Audit Offices**

*Learn. Perform. Succeed.*



# Subpart 42.2—Contract Administration Services

- **42.201 Contract administration responsibilities.**
  - Perform functions listed in 42.302(a)
  - Perform delegated functions in 42.302(b) as authorized
- **42.202 Assignment of contract administration.**
  - Delegating functions
  - Special Instruction
  - Delegating additional functions
  - Rescinding functions
  - Secondary delegations of contract administration
  - Special surveillance
  - Refusing delegations
- **42.203 Contract administration services directory**
  - Found at [www.dcma.mil](http://www.dcma.mil)



# **Subpart 42.3—Contract Administration Office Functions**

---

- **42.302 Contract administration functions.**
  - **Delegation of the contract administration to a CAO**
  - **Delegated functions**
  - **CAO performs function when authorized**



# **Subpart 42.4—Correspondence and Visits**

---

- **42.401 Contract correspondence.**
  - **Forward correspondence thru cognizant (CAO) to contractor**
- **42.402 Visits to contractors' facilities.**
  - **Information provided to CAO before visit**
  - **Invite CAO representative**
  - **Information available for visit and uses**
- **42.403 Evaluation of contract administration offices.**



# **Subpart 42.5 - Postaward Orientation**

---

- **42.501 - A postaward orientation aids the government and the contractor in obtaining a “Clear and mutual understanding of all contract requirements” to “Identify and resolve potential problems”, but is not a substitute for understanding work requirements and is not to be used to change the contract**



# **Subpart 42.5 - Postaward Orientation**

- **42.502 - Selecting contracts for postaward orientations**
  - a) **Nature and extent of preaward survey**
  - b) **Type, value, and complexity of contract**
  - c) **Complexity and acquisition history of product/service**
  - d) **Requirements for spare parts and related equipment**
  - e) **Urgency of the delivery schedule**
  - f) **Length of the planned production cycle**
  - g) **Extent of subcontracting**
  - h) **Contractor's performance history**
  - i) **Contractor's status, if any**
  - j) **Performance history with socio-economic subcontracting**
  - k) **Safety precautions**
  - l) **Complex financing arrangements**





# **Subpart 42.5 - Postaward Orientation**

---

- **42.503 - Postaward conferences**
  - **C.O. makes arrangements**
  - **Chairperson leads ensuring no one makes commitments or changes other than the C.O.**
  - **Chairperson drafts conference report and distributes to all attendees afterward**
- **42.504 - Postaward letters**
  - **May be issued in lieu of conference**
- **42.505 - Postaward subcontractor conferences**



# **Subpart 42.6 — Corporate Administrative Contracting Officer (CACO)**

---

- **42.602 Assignment and location**
  - **CACO assignment**
  - **Decision to initiate or discontinue**
  - **Responsibility for assigning CACO**
  
- **42.603 Responsibilities**
  - **Final indirect rates**
  - **Establish recommendations on corporate/home office expense allocations**
  - **Administration of CAS**
  - **Utilize audit agency services and keep cognizant ACO's informed about important corporate-wide issues**



# **Subpart 42.7 — Indirect Cost Rates**

---

- **42.703 ACO is responsible for establishing Final Indirect Cost Rates (Overhead rates)**
  - These rates are binding on all agencies and their contracting offices
  - Final Rates proposals are certified by contractor
    - If not, the ACO may unilaterally establish Final Rates
- **42.704 Billing rates are established to provide standardized cost rate for interim reimbursement of incurred indirect costs**
  - Interim rates used until Final Rates are established



# Subpart 42.7 – Indirect Cost Rates

- **42.705 Indirect cost rates are established either by ACO or Auditor**
  - DCMA established rates - multidivisional companies with CACO or with resident CAO, when the C.O. determines to have ACO establish rates, for educational institutions, state/local governments, and non-profit activities other than state/local government
  - DCAA determined rates - when conditions for ACO established rates do not apply, when ACO and auditor agree that rates may be negotiated with little difficulty, when contractor has primarily fixed price contracts, the cost of ACO established rates would outweigh the benefit, or the ACO and auditor agree that special circumstances exist.
- **42.706 Distribution of Documents**
  - The ACO will distribute rate agreements to the contractor and the agencies that negotiate with the contractor as soon as possible after rates are negotiated. Copies of rates negotiation memorandum and/or audit report are to be provided to agencies as well.



# **Subpart 42.7 — Indirect Cost Rates**

- **42.708 Quick Close-out Procedures**
  - **Provides for settlement of indirect costs in advance of final negotiated rates.**
  - **Contract must be physically complete and have an insignificant level of unsettled indirect costs estimated at under \$1M and less than 15% of total unsettled indirect costs on all cost contracts.**
  - **Must have bilateral agreement**
  - **No adjustments will be made based on later final rate negotiations**
  - **Agreed to quick close-out rates do not create binding precedent for any future negotiations**



# Subpart 42.7 — Indirect Cost Rates

- **42.709 Penalties and Interest**
  - **Section covers penalties related to unallowable indirect costs included in contractor's final indirect cost rate proposals or final statement of costs incurred on fixed price incentive contracts.**
  - **Applies on to TINA contracts**
  - **Provides for penalty equal to costs unallowed, plus interest**
  - **If costs were determined to be unallowed prior to proposal submission, yet still included, the penalty is twice the unallowed amount**
  - **These penalties are in addition to any other administrative, criminal, or civil penalties provided by law**
  - **It is not necessary to have paid the unallowed costs to assess a penalty**



# Subpart 42.7 — Indirect Cost Rates

- **42.709-5 Waiver of Penalty**
  - **The cognizant ACO may waive the penalty if:**
    - **The contractor withdraws the proposal before official audit commences and submits a revised proposal excluding the unallowable costs**
    - **The amount of unallowable costs is not more than \$10K**
    - **The contractor demonstrates to the ACO that they have established training and controls to avoid the inclusion of unallowable costs in the final indirect costs rate proposal and that the controls are effective**
    - **The contractor demonstrates to the ACO that the unallowable costs were inadvertently included in error**



# **Subpart 42.8 – Disallowance of Costs**

- **42.801 Notice of intent to disallow cost**
  - The ACO may notify the contractor at any time during performance of the contract that unallowable costs are included in the indirect cost pool
  - These costs are usually identified in routine monitoring of contractor costs
  - Notice must be provided to contractor and to other C.O.'s having cognizance over other elements of the contractors organization
  - Notice must be coordinated with C.O. or auditor having final indirect rate settlement authority
- **42.803 Disallowing costs after incurrence**
  - Upon receipt of payment vouchers, the C.O. may disallow costs or suspend payment of questioned costs
  - Contractor may submit written request to C.O. to discuss determination and/or file a claim under the Disputes Clause of the contract





# **Subpart 42.9 — Bankruptcy**

- **42.902 Procedures**
  - **When notified of bankruptcy proceedings, the C.O. will:**
    - **Notify all appropriate agencies and buying activities (Legal, finance, contracting, property)**
    - **Determine amount of potential claim against contractor if in default**
    - **Take appropriate actions to protect the Government's interests**
    - **Consult with legal counsel before taking any actions**



# **Subpart 42.11 – Production Surveillance and Reporting**

- **42.1101 Production Surveillance is used to determine contract progress and identify factors that may delay performance**
  - **Performed through a review of contractor performance plans, schedules and processes, and actual performance**
- **42.1104 Surveillance Requirements**
  - **Amount of surveillance is determined by the C.O. and is based on**
    - **The criticality designator assigned by the issuing C.O.**
    - **Consideration of the contract requirements for:**
      - **reporting progress**
      - **the performance schedule**
      - **the production plan**
      - **the contractor's history of performance**
      - **the contractor's experience with the supply or service**
      - **the contractor's financial capability**
      - **other written guidance from the Contracting Office**



# **Subpart 42.11 – Production Surveillance and Reporting**

- **42.1105 Assignment of Criticality Designator**
  - **Contracting Officer assigns criticality designator**
    - **A - Critical contracts, including DX ratings, or contracts issued under unusual and compelling urgency, and contracts for major systems**
    - **B - Contracts for items required to maintain a repair or production line to preclude “out of stock” conditions, or to meet needs for non-stock items**
    - **C - All other contracts**
- **42.1106 Reporting Requirements**
  - **Contracting Officer may require contractor to submit reports on contract performance and production progress**
  - **The CAO may issue a report advising the C.O. and the inventory manager of any potential or real delay in performance or production**
    - **Report will be in writing, will be issued with sufficient time to take action, and included a recommendation for action**



# **Subpart 42.11 – Novation and Change-of-Name Agreements**

- **Novation Agreements**
  - Used to recognize the transfer of contractor assets to another responsible party other than that listed on the contract
- **Change-of-Name Agreements**
  - Used to recognize the legal change of an entities registered name
- **42.1202 Responsibility for Executing Agreements**
  - Shall be the ACO or CACO, or if no ACO is designated, is will be the ACO or C.O. with the largest amount of unsettled (unpaid and billed but not paid) contract balance.
  - Agreement will be drafted IAW language in FAR 42.1204 or FAR 42.1205, as applicable



# **Subpart 42.11 – Novation and Change-of-Name Agreements**

- **42.1203 Processing Agreements**
  - **Contractors desiring recognition of a transfer to a successor or a change-of-name must submit a written request to the cognizant C.O.**
  - **Contracting Officer will notify all applicable contracting activities of proposed agreement along with a list of affected contracts**
  - **Request submission of comments or objections within 30 days**
  - **After receipt of all necessary information, the C.O. will evaluate if it is in the Government's best interest to allow the change based on comments received from other contracting activities, the responsibility of the successor company, and any other factors available**



# **Subpart 42.11 – Novation and Change-of-Name Agreements**

- **42.1204 Applicability of Novation Agreements**
  - **The transfer of contracts to a third party are prohibited unless specifically authorized by the Government**
  - **Government agreement is required when transferring whole or partial assets to another party and the third party will be performing the contract requirements**
  - **The Government may choose not to accept the Novation - at which time the original contractor would be required to perform, or face default termination**
  - **All factors should be considered (financial, responsibility, conflict of interest, etc) when deciding to accept a Novation Agreement.**
  - **The contractor must provide all necessary documentation to satisfy Government's concerns, including sales/transfer agreements, list of all affected contracts, and evidence of the transferee's capability to perform**



# **Subpart 42.13 — Suspension of Work, Stop Work Orders, and Government Delay of Work**

- **42.1302 Suspension of Work**
  - Suspension of work for Architect-Engineer and Construction contracts may be issued for a reasonable period of time
- **42.1303 Stop Work Orders**
  - Stop work orders are used when bilateral agreements are not feasible
  - Used when stoppage is required for reasons such as state-of-the-art, production or engineering break-throughs, or realignment of programs
  - Stop Work Orders should include description of work to be stopped, instructions for contractor's further issuance of orders, guidance on sub-contracts, and other suggestions for minimizing costs
  - C.O. must promptly discuss the situation and modify the contract if necessary and take action to either terminate the contract, cancel the Stop Work Order, or extend the period of the Stop Work Order



# **Subpart 42.13 — Suspension of Work, Stop Work Orders, and Government Delay of Work**

- **42.1304 Government Delay of Work**
  - **Used to provide a means to settle costs incurred due to a C.O. delaying work either by an act in administering the contract, or as a result of the failure to act within a specified time period in the contract**
  - **Not used to settle a claim when the Changes clause is applicable**
  - **When applicable, the C.O. will negotiate a reasonable settlement of actual costs incurred as a result of the delay, excluding profit**





# **Subpart 42.15 – Contractor Performance Information**

- **42.1501 Contractor past performance information is relevant for future source selection purposes and should include detailed information on their record of contract conformance, cost and schedule control, management control, and cooperative behavior.**
  - **All contracts exceeding the SAT should be evaluated upon completion, or on an interim basis**
  - **Follow agency procedures for documenting and submitting performance information which usually includes input from technical, contracting, and end users as appropriate**
  - **Performance information will be provided to the contractors as soon as practicable and contractors will be given 30 days to respond with rebuttals, comments, or statements.**
  - **Reports are considered source selection sensitive and must be protected**



# **Subpart 42.16 — Small Business Contract Administration**

- **42.1601 Contracting Officers shall make every reasonable effort to respond in writing within 30 days to any written request to the C.O. from a Small Business concern with respect to a contract administration matter, except for requests for a contracting officer decision under the Contract Disputes Act.**



# **Subpart 42.16 — Small Business Contract Administration**

- **42.1701 Forward Pricing Rate Agreements (FPRA) may be requested by the contractor or initiated by the C.O. or the ACO**
  - **Must consider the benefits derived and the effort required to establish and monitor those rate agreements before deciding to establish them**
  - **Normally used only with contractors who have a significant volume of Government contract proposals**
  - **ACO will prepare PNM and forward it and the proposal to the cognizant audit activity and to all contracting offices known to be affected by the FPRA**
  - **The FPRA will contain specific information about the terms, expiration, and other pertinent data**
  - **The FPRA may be cancelled at the option of either the government or the contractor**
  - **If an FPRA is not available, the ACO may issue a FPRR**
  - **Continuous updates to the FPRA are expected throughout the year**



# Defense Contract Audit Agency

---

The Defense Contract Audit Agency, under the authority, direction, and control of the **Under Secretary of Defense (Comptroller)**, is responsible for performing all contract audits for the Department of Defense, and providing accounting and financial advisory services regarding contracts and subcontracts to all DoD Components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. DCAA also provides contract audit services to some other Government Agencies.

***Learn. Perform. Succeed.***



**Defense Acquisition University**